

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL A**

IN RE: BOBBY K. KEETER, Respondent
Arkansas Bar ID#77076
CPC Docket No. 2010-059

FILED

OCT 12 2010

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Meda Ballard in an Affidavit dated July 1, 2010. The information related to Mr. Keeter's conduct as opposing counsel in the lawsuit of *Ballard v. George Page d/b/a Page Enterprises*, Polk County Circuit Court Case Number CIV 2005-0145.

On July 13, 2010, Respondent was served with a formal complaint, supported by affidavit from Mrs. Ballard. Respondent filed a timely response to the complaint. Mrs. Ballard submitted rebuttal. Thereafter, pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002), the matter proceeded to ballot vote before Panel A of the Committee.

The information before the Committee reflected that during 2003, Mrs. Ballard and her husband hired George Page of Page Enterprises, to build a home for them in Mena, Arkansas. Within four (4) months of moving in the home, they began to experience major problems.

Because of the issues, the Ballards filed a lawsuit against Mr. Page in 2005. Bob Keeter, an attorney practicing in Mena, Polk County, Arkansas, filed an answer for Mr. Page. Early on in the litigation, it became clear that Mr. Page, through his counsel, Mr. Keeter, was not participating in the discovery process unless the Court ordered it done. Neither Mr. Keeter nor Mr. Page appeared for Mr. Page's scheduled deposition until the third scheduled date. This delay

tactic of Mr. Keeter kept the Ballards from having their day in Court for an extended period of time.

The Ballards' first attorney was Daniel Becker who died in July 2008 while the matter was still pending. Mr. Becker aggressively pursued the matter but due to Mr. Keeter's failure to respond or participate, Mr. Becker was unable to move the matter forward to conclusion. The Ballards' second attorney was Richard Slagle of Hot Springs. Mr. Slagle allegedly suffered a massive stroke before Christmas 2008 and was thereafter unable to handle the matter. Since November 2009, the Ballards have been represented by Burt Newell, who was able to assist them in obtaining their day in Court.

Because of Mr. Keeter's conduct in delaying this matter, the Ballards have been losing their life's savings. They can no longer afford the repairs on the house and they cannot sell it for any price near what they have invested in it.

Mr. Becker filed a lawsuit on October 6, 2005. Mr. Keeter filed an Answer on October 26, 2005. Mr. Keeter also filed Interrogatories and Requests for Production of Documents. Responses were filed in a timely fashion. Mr. Becker submitted Interrogatories and Requests for Production of Documents to Mr. Page via Mr. Keeter during November 2005. No responses were filed. Mr. Becker wrote Mr. Keeter on February 7, 2006, about the discovery requests. No responses were delivered within the three (3) weeks that followed that letter so Mr. Becker sent Mr. Keeter another letter. Mr. Keeter did not respond. On March 15, 2006, Mr. Becker sent a Motion to Compel for filing, along with a cover letter to Judge Looney. On April 10, 2006, Mr. Becker again wrote Judge Looney to let him know that Mr. Keeter had not responded to the Motion to Compel. On April 20, 2006, Mr. Becker let his clients know that the Judge had signed

an Order to Compel.

During August 2006, Mr. Becker requested a two day jury trial be set. Two months later, he filed a Motion to Hold Defendant in Contempt and Renewed Motion for Sanctions against the Defendant. Later in October 2006, Mr. Becker wrote Mr. Keeter and requested dates to take the deposition of his client. Mr. Keeter did not respond. Mr. Becker wrote him again on November 14, 2006.

On December 1, 2006, Mr. Becker wrote to let his clients know that he had scheduled a deposition of Mr. Page. He explained that since Mr. Keeter had not cooperated by providing dates for a deposition of Mr. Page, he had been required to just set one and send Mr. Keeter notice. Finally in December 2006, Mr. Keeter submitted responses to discovery but because they were incomplete, Mr. Becker wrote him about them.

During late December 2006, Mr. Becker filed a Motion for Sanctions and then during January 2007, he requested that it be set for hearing. Mr. Keeter was sent notice of hearing on February 28, 2007. An Order was entered on March 12, 2007 directing responses. No responses were forthcoming. Mr. Becker filed another Motion to Hold Defendant in Contempt and Renewed Motion for Sanctions. Because Mr. Becker did not have the discovery information from Mr. Keeter and his client, he was compelled to request a continuance of the trial date.

Beginning on June 21, 2007, Mr. Becker started his attempts to have Mr. Keeter provide dates for a deposition of Mr. Page. Mr. Keeter did not respond. Mr. Becker wrote him again on July 5, 2007. With no dates provided, Mr. Becker again prepared a Notice of Deposition.

Again there was no cooperation by Mr. Keeter or his client, so Mr. Becker requested hearing on the Renewed Motion to Hold Defendant in Contempt. Mr. Becker requested that the

Court strike the Answer of Mr. Page. Judge Looney did not enter the requested Order. Mr. Becker again requested hearing on the Motion.

Mr. Keeter finally agreed to a date of January 15, 2008, for a deposition of his client. He also agreed that his client would pay \$350 as costs to the Ballards.

The Ballards met with Scott Hickam, who was the Attorney for Mr. Becker's estate, and retrieved the file Mr. Becker had maintained on the matter. In the file there was very little from Mr. Keeter to Mr. Becker. The bulk of the file contained repeated requests from Mr. Becker to Mr. Keeter trying to get him to attend to this matter.

The Ballards hired Richard Slagle at that point. He was unable to complete the matter due to his own health issues. Prior to withdrawing from representation, Mr. Slagle filed a Motion to Compel and a Motion for Contempt based on actions of Mr. Keeter and his client. An Order was entered on July 22, 2009, addressing the Motions. Burt Newell of Hot Springs entered his appearance for the Ballards in November 2009.

The delay in the legal matter was for too long and without good cause. Mr. Keeter did not act within the bounds of an ethical attorney with regard to moving the litigation. He caused many problems and much delay by not attending to the Court proceeding as would be within the boundaries of the rules governing his conduct. Mr. Keeter frustrated the Ballards' attempt to obtain legal redress from his client, Mr. Page. The Ballards were finally able to have a trial in June 2010. They received a Judgment in the amount of \$75,000, which is far less than the actual damages to their home.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel A of the

Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Keeter's conduct violated Rule 3.2 when he failed to participate in the litigation brought by the Ballards against his client, George Page, to such an extent that unreasonable delay occurred; when Mr. Keeter failed to act in any expeditious way in the litigation brought by the Ballards against his client, George Page, which frustrated the Ballards' attempt to seek legal recourse for Mr. Page's conduct in the building of their home; when Mr. Keeter failed to respond to inquiries made by Mr. Becker; and, when despite reasonable requests by Mr. Becker, Mr. Keeter failed to respond in any fashion as to when his client would be available for deposition in the pending litigation. Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

2. That Mr. Keeter's conduct violated Rule 3.4(c), when he failed to submit responses or objections to Interrogatories and Requests for Production served on him in November 2005 by Mr. Becker; when he failed to respond to the Motion to Compel filed by Mr. Becker in March 2006; when he failed to comply with the Order to Compel entered in April 2006, by Judge Looney; when he failed to send complete responses to the discovery requests when he finally responded on Mr. Page's behalf in December 2006; when failed to respond to the Motion for Sanctions filed by Mr. Becker in December 2006; and, when he failed to comply with the Order entered by Judge Looney in March 2007, concerning discovery responses. Rule 3.4(c) requires that a lawyer not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

3. That Mr. Keeter's conduct violated Rule 3.4(d), when he failed to make reasonably diligent effort to comply with the discovery requests by Mr. Becker, in that he failed

to even communicate about providing responses, when inquiry was made and after an Order compelling responses was entered. Rule 3.4(d) requires that a lawyer, in pretrial procedure, not fail to make reasonable diligent effort to comply with a legally proper discovery request made by an opposing party.

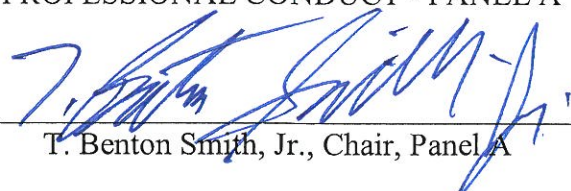
4. That Mr. Keeter's conduct violated Rule 4.4 because the totality of Mr. Keeter's inaction and non-responsiveness to counsel for the Ballards for over four years demonstrates his conduct has been for the purpose of delaying or burdening them by keeping the Ballards from having their matter heard in Court and from seeking the recourse that they appear entitled to from his client. Rule 4.4 requires, in pertinent part, that in representing a client, a lawyer not use means that have no substantial purpose other than to embarrass, delay or burden a third person.

5. That Mr. Keeter's conduct violated Rule 8.4(d), because his failure to communicate with opposing counsel, coupled with his failure to participate in the discovery process of the litigation, caused unnecessary delay in the Ballards having their claim heard in Court. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that BOBBY K. KEETER, Arkansas Bar ID# 77076, be, and hereby is, REPRIMANDED for his conduct in this matter. In addition, pursuant to Section 18A of the Procedures, Mr. Keeter is assessed the cost of this proceeding in the amount of FIFTY DOLLARS. Mr. Keeter is also ordered to pay a fine in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS. The costs assessed and fine imposed herein, totaling TWO THOUSAND FIVE HUNDRED FIFTY DOLLARS (\$2550) shall

be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL A

By: 
T. Benton Smith, Jr., Chair, Panel A

Date: September 17, 2010